IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5535 OF 2004

WITH

WRIT PETITION NO.5536 OF 2004

Hemchandra Shankarrao Masulkar, .. Petitioner.

Vs

1. The Divisional Joint Registrar,

Pune Division and ors. .. Respondents.

Mr.P.K.Hushing, for the petitioner.

Mr M.H.Sokar, AGP for respondent nos 1 and 2.

Mr Kishor V. Tembe, for respondent no.3.

CORAM : D.B.BHOSALE,J.

DATE : 14th October, 2004.

PC:

1. Heard the learned counsel for the parties.

2. The petitioner in both these petitions has challenged the order dated 5.6.2004 passed by Divisional Joint Registrar, Co-operative Societies, Pune, by which the revision application filed by the petitioner has been rejected. The revision was directed against the order dated 19.9.2003 passed in the application filed by the petitioner seeking stay to the proceedings under the provisions of section 101 of the Maharashtra Co-operative Societies Act,1960. The stay was sought on

the ground that the petitioner's Dispute bearing Nos. 101/2002 and 102/2002 filed in the Cooperative Court No. II, seeking declaration and injunction contending that the petitioner never had any intention to stand surety for the loan amount of Rs.10.50 lacs and Rs.17 lacs respectively but he had agreed to stand surety only for the term loan and cash credit of Rs. one lac respectively, is pending. According to the petitioner, if the recovery proceedings under section 101 is not stayed, there wil be conflicting decisions of the two forums in the proceedings between the same parties and in respect of the similar issues involved in both the proceedings. The Disputes were filed on 12.6.2002, while the recovery application under section 101 was filed by the respondent-Bank on 30.10.2002. The stay to the recovery proceedings was also sought on the ground that if the petitioner succeeds in the Dispute, there cannot be a recovery as sought by the respondent-Bank against him. In short, the petitioner claims that the matter in issue is directly and substantially in issue in the disputes filed earlier between the same parties.

3. Having heard the learned counsel for the parties and considered the material placed before me, I am satisfied that the following order will meet the ends of justice. As a matter of fact, the learned counsel for the parties

also agreed for the following order.

(i) The Co-operative Court No.II at Pune, shall decide Dispute Nos 101/2002 and 102/2002 as expeditiously as possible and preferably within a period of four months from the date of receipt of this order. The petitioner to communicate this order to the concerned Co-operative Court within four weeks from today.

(ii) It is open for the Assistant Registrar, Co-operative Societies, to proceed with the hearing of recovery Application Nos. 101/Rupee/ Chinchwad /740/2002-03 and 101/Rupee /Chinchwad /741/2002-03 and dispose them of as expeditiously as possible and preferably within a period of four months from the date of receipt of this order.

(iii) The respondent-Bank to communicate this order to the concerned Assistant registrar within four weeks from today.

(iv) If the orders in the recovery proceedings are passed before disposal of the Disputes, same shall remain stayed till disposal of the Disputes in so far as the petitioner is concerned.

(v) The affidavit filed by the petitioner is taken on record and marked ’X" for identification. Statements made in the affidavit are accepted. In addition to the affidavit, Mr Hushing,learned counsel for the petitioner, on instructions from his client, states that

the petitioner shall furnish security to the extent of Rs One Lac each in both the recovery applications to the satisfaction of the concerned Assistant Registrar, within eight weeks from today.

4. Both the writ petitions stand disposed of.

. While disposing of the writ petitions, I shall not be understood to have expressed any opinion on the merits of the case. The Co-operative Court as well as Assistant Registrar, shall deal with the matters before them on merits in accordance with law.

. Parties to act on an authenticated copy of this order which may be made available to them.

(D.B.BHOSALE, J.)